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H. R. 1676

IN THE SENATE OF THE UNITED STATES

JUNE 1, 2009

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To prevent tobacco smuggling, to ensure the collection of
all tobacco taxes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Prevent All Cigarette Trafficking Act of 2009” or
4 “PACT Act”.

5 (b) FINDINGS.—Congress finds that—

6 (1) the sale of illegal cigarettes and smokeless
7 tobacco products significantly reduces Federal,
8 State, and local government revenues, with Internet
9 sales alone accounting for billions of dollars of lost
10 Federal, State, and local tobacco tax revenue each
11 year;

12 (2) Hezbollah, Hamas, al Qaeda, and other ter-
13 rorist organizations have profited from trafficking in
14 illegal cigarettes or counterfeit cigarette tax stamps;

15 (3) terrorist involvement in illicit cigarette traf-
16 ficking will continue to grow because of the large
17 profits such organizations can earn;

18 (4) the sale of illegal cigarettes and smokeless
19 tobacco over the Internet, and through mail, fax, or
20 phone orders, makes it cheaper and easier for chil-
21 dren to obtain tobacco products;

22 (5) the majority of Internet and other remote
23 sales of cigarettes and smokeless tobacco are being
24 made without adequate precautions to protect
25 against sales to children, without the payment of ap-
26 plicable taxes, and without complying with the nomi-

1 nal registration and reporting requirements in exist-
2 ing Federal law;

3 (6) unfair competition from illegal sales of ciga-
4 rettes and smokeless tobacco is taking billions of dol-
5 lars of sales away from law-abiding retailers
6 throughout the United States;

7 (7) with rising State and local tobacco tax
8 rates, the incentives for the illegal sale of cigarettes
9 and smokeless tobacco have increased;

10 (8) the number of active tobacco investigations
11 being conducted by the Bureau of Alcohol, Tobacco,
12 Firearms, and Explosives rose to 452 in 2005;

13 (9) the number of Internet vendors in the
14 United States and in foreign countries that sell ciga-
15 rettes and smokeless tobacco to buyers in the United
16 States increased from only about 40 in 2000 to
17 more than 500 in 2005; and

18 (10) the intrastate sale of illegal cigarettes and
19 smokeless tobacco over the Internet has a substan-
20 tial effect on interstate commerce.

21 (c) PURPOSES.—It is the purpose of this Act to—

22 (1) require Internet and other remote sellers of
23 cigarettes and smokeless tobacco to comply with the
24 same laws that apply to law-abiding tobacco retail-
25 ers;

1 (2) create strong disincentives to illegal smug-
2 gling of tobacco products;

3 (3) provide government enforcement officials
4 with more effective enforcement tools to combat to-
5 bacco smuggling;

6 (4) make it more difficult for cigarette and
7 smokeless tobacco traffickers to engage in and profit
8 from their illegal activities;

9 (5) increase collections of Federal, State, and
10 local excise taxes on cigarettes and smokeless to-
11 bacco; and

12 (6) prevent and reduce youth access to inexpen-
13 sive cigarettes and smokeless tobacco through illegal
14 Internet or contraband sales.

15 **SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKE-**
16 **LESS TOBACCO TAXES.**

17 (a) DEFINITIONS.—The Act of October 19, 1949 (15
18 U.S.C. 375 et seq.; commonly referred to as the “Jenkins
19 Act”) (referred to in this Act as the “Jenkins Act”), is
20 amended by striking the first section and inserting the fol-
21 lowing:

22 **“SECTION 1. DEFINITIONS.**

23 “As used in this Act, the following definitions apply:

1 “(1) ATTORNEY GENERAL.—The term ‘Attor-
2 ney General’ means the Attorney General of the
3 United States.

4 “(2) ATTORNEY GENERAL.—The term ‘attorney
5 general’, with respect to a State, means the attorney
6 general or other chief law enforcement officer of the
7 State.

8 “(3) CIGARETTE.—

9 “(A) IN GENERAL.—For purposes of this
10 Act, the term ‘cigarette’ shall—

11 “(i) have the same meaning given that
12 term in section 2341 of title 18, United
13 States Code; and

14 “(ii) include ‘roll-your-own tobacco’
15 (as that term is defined in section 5702 of
16 the Internal Revenue Code of 1986).

17 “(B) EXCEPTION.—For purposes of this
18 Act, the term ‘cigarette’ does not include a
19 ‘cigar’, as that term is defined in section 5702
20 of the Internal Revenue Code of 1986.

21 “(4) COMMON CARRIER.—The term ‘common
22 carrier’ means any person (other than a local mes-
23 senger service or the United States Postal Service)
24 that holds itself out to the general public as a pro-
25 vider for hire of the transportation by water, land,

1 or air of merchandise, whether or not the person ac-
2 tually operates the vessel, vehicle, or aircraft by
3 which the transportation is provided, between a port
4 or place and a port or place in the United States.

5 “(5) CONSUMER.—The term ‘consumer’ means
6 any person that purchases cigarettes or smokeless
7 tobacco, but does not include any person lawfully op-
8 erating as a manufacturer, distributor, wholesaler,
9 or retailer of cigarettes or smokeless tobacco.

10 “(6) DELIVERY SALE.—The term ‘delivery sale’
11 means any sale of cigarettes or smokeless tobacco to
12 a consumer if—

13 “(A) the consumer submits the order for
14 such sale by means of a telephone or other
15 method of voice transmission, the mails, or the
16 Internet or other online service, or the seller is
17 otherwise not in the physical presence of the
18 buyer when the request for purchase or order is
19 made; or

20 “(B) the cigarettes or smokeless tobacco
21 are delivered to the buyer by common carrier,
22 private delivery service, or other method of
23 remote delivery, or the seller is not in the phys-
24 ical presence of the buyer when the buyer ob-

1 tains possession of the cigarettes or smokeless
2 tobacco.

3 “(7) DELIVERY SELLER.—The term ‘delivery
4 seller’ means a person who makes a delivery sale.

5 “(8) INDIAN COUNTRY.—The term ‘Indian
6 country’ means—

7 “(A) Indian country as defined in section
8 1151 of title 18, United States Code, except
9 that within the State of Alaska that term ap-
10 plies only to the Metlakatla Indian Community,
11 Annette Island Reserve; and

12 “(B) any other land held by the United
13 States in trust or restricted status for one or
14 more Indian tribes.

15 “(9) INDIAN TRIBE.—The term ‘Indian tribe’,
16 ‘tribe’, or ‘tribal’ refers to an Indian tribe as defined
17 in section 4(e) of the Indian Self-Determination and
18 Education Assistance Act (25 U.S.C. 450b(e)) or as
19 listed pursuant to section 104 of the Federally Rec-
20 cognized Indian Tribe List Act of 1994 (25 U.S.C.
21 479a–1).

22 “(10) INTERSTATE COMMERCE.—The term
23 ‘interstate commerce’ means commerce between a
24 State and any place outside the State, commerce be-
25 tween a State and any Indian country in the State,

1 or commerce between points in the same State but
2 through any place outside the State or through any
3 Indian country.

4 “(11) INTO A STATE, PLACE, OR LOCALITY.—A
5 sale, shipment, or transfer of cigarettes or smokeless
6 tobacco that is made in interstate commerce, as de-
7 fined herein, shall be deemed to have been made into
8 the State, place, or locality in which such cigarettes
9 or smokeless tobacco are delivered.

10 “(12) PERSON.—The term ‘person’ means an
11 individual, corporation, company, association, firm,
12 partnership, society, State government, local govern-
13 ment, Indian tribal government, governmental orga-
14 nization of such government, or joint stock company.

15 “(13) STATE.—The term ‘State’ means each of
16 the several States of the United States, the District
17 of Columbia, the Commonwealth of Puerto Rico, or
18 any territory or possession of the United States.

19 “(14) SMOKELESS TOBACCO.—The term
20 ‘smokeless tobacco’ means any finely cut, ground,
21 powdered, or leaf tobacco, or other product con-
22 taining tobacco, that is intended to be placed in the
23 oral or nasal cavity or otherwise consumed without
24 being combusted.

1 “(15) TOBACCO TAX ADMINISTRATOR.—The
2 term ‘tobacco tax administrator’ means the State,
3 local, or tribal official duly authorized to collect the
4 tobacco tax or administer the tax law of a State, lo-
5 cality, or tribe, respectively.

6 “(16) TRIBAL ENTERPRISE.—The term ‘tribal
7 enterprise’ means any business enterprise, incor-
8 porated or unincorporated under Federal or tribal
9 law, of an Indian tribe or group of Indian tribe.

10 “(17) USE.—The term ‘use’, in addition to its
11 ordinary meaning, means the consumption, storage,
12 handling, or disposal of cigarettes or smokeless to-
13 bacco.”.

14 (b) REPORTS TO STATE TOBACCO TAX ADMINISTRA-
15 TORS.—Section 2 of the Jenkins Act (15 U.S.C. 376) is
16 amended—

17 (1) by striking “cigarettes” each place it ap-
18 pears and inserting “cigarettes or smokeless to-
19 bacco”;

20 (2) in subsection (a)—

21 (A) in the matter preceding paragraph

22 (1)—

23 (i) by inserting “CONTENTS.—” after

24 “(a)”;

1 (ii) by striking “or transfers” and in-
2 serting “, transfers, or ships”;

3 (iii) by inserting “, locality, or Indian
4 country of an Indian tribe” after “a
5 State”;

6 (iv) by striking “to other than a dis-
7 tributor licensed by or located in such
8 State,”; and

9 (v) by striking “or transfer and ship-
10 ment” and inserting “, transfer, or ship-
11 ment”;

12 (B) in paragraph (1)—

13 (i) by striking “with the tobacco tax
14 administrator of the State” and inserting
15 “with the Attorney General and with the
16 tobacco tax administrators of the State
17 and place”; and

18 (ii) by striking “; and” and inserting
19 the following: “, as well as telephone num-
20 bers for each place of business, a principal
21 electronic mail address, any website ad-
22 dresses, and the name, address, and tele-
23 phone number of an agent in the State au-
24 thorized to accept service on behalf of such
25 person;”;

1 (C) in paragraph (2), by striking “and the
2 quantity thereof.” and inserting “the quantity
3 thereof, and the name, address, and phone
4 number of the person delivering the shipment to
5 the recipient on behalf of the delivery seller,
6 with all invoice or memoranda information re-
7 lating to specific customers to be organized by
8 city or town and by zip code; and”;

9 (D) by adding at the end the following:

10 “(3) with respect to each memorandum or in-
11 voice filed with a State under paragraph (2), also
12 file copies of such memorandum or invoice with the
13 tobacco tax administrators and chief law enforce-
14 ment officers of the local governments and Indian
15 tribes operating within the borders of the State that
16 apply their own local or tribal taxes on cigarettes or
17 smokeless tobacco.”;

18 (3) in subsection (b)—

19 (A) by inserting “PRESUMPTIVE EVI-
20 DENCE.—” after “(b)”;

21 (B) by striking “(1) that” and inserting
22 “that”; and

23 (C) by striking “, and (2)” and all that
24 follows and inserting a period; and

25 (4) by adding at the end the following:

1 “(c) USE OF INFORMATION.—A tobacco tax adminis-
2 trator or chief law enforcement officer who receives a
3 memorandum or invoice under paragraph (2) or (3) of
4 subsection (a) shall use such memorandum or invoice sole-
5 ly for the purposes of the enforcement of this Act and the
6 collection of any taxes owed on related sales of cigarettes
7 and smokeless tobacco, and shall keep confidential any
8 personal information in such memorandum or invoice ex-
9 cept as required for such purposes.”.

10 (c) REQUIREMENTS FOR DELIVERY SALES.—The
11 Jenkins Act is amended by inserting after section 2 the
12 following:

13 **“SEC. 2A. DELIVERY SALES.**

14 “(a) IN GENERAL.—With respect to delivery sales
15 into a specific State and place, each delivery seller shall
16 comply with—

17 “(1) the shipping requirements set forth in sub-
18 section (b);

19 “(2) the recordkeeping requirements set forth
20 in subsection (c);

21 “(3) all State, local, tribal, and other laws gen-
22 erally applicable to sales of cigarettes or smokeless
23 tobacco as if such delivery sales occurred entirely
24 within the specific State and place, including laws
25 imposing—

1 “(A) excise taxes;

2 “(B) licensing and tax-stamping require-
3 ments;

4 “(C) restrictions on sales to minors; and

5 “(D) other payment obligations or legal re-
6 quirements relating to the sale, distribution, or
7 delivery of cigarettes or smokeless tobacco; and

8 “(4) the tax collection requirements set forth in
9 subsection (d).

10 “(b) SHIPPING AND PACKAGING.—

11 “(1) REQUIRED STATEMENT.—For any ship-
12 ping package containing cigarettes or smokeless to-
13 bacco, the delivery seller shall include on the bill of
14 lading, if any, and on the outside of the shipping
15 package, on the same surface as the delivery ad-
16 dress, a clear and conspicuous statement providing
17 as follows: ‘CIGARETTES/SMOKELESS TO-
18 BACCO: FEDERAL LAW REQUIRES THE PAY-
19 MENT OF ALL APPLICABLE EXCISE TAXES,
20 AND COMPLIANCE WITH APPLICABLE LI-
21 CENSING AND TAX-STAMPING OBLIGA-
22 TIONS’.

23 “(2) FAILURE TO LABEL.—Any shipping pack-
24 age described in paragraph (1) that is not labeled in
25 accordance with that paragraph shall be treated as

1 nondeliverable matter by a common carrier or other
2 delivery service, if the common carrier or other deliv-
3 ery service knows or should know the package con-
4 tains cigarettes or smokeless tobacco. If a common
5 carrier or other delivery service believes a package is
6 being submitted for delivery in violation of para-
7 graph (1), it may require the person submitting the
8 package for delivery to establish that it is not being
9 sent in violation of paragraph (1) before accepting
10 the package for delivery. Nothing in this paragraph
11 shall require the common carrier or other delivery
12 service to open any package to determine its con-
13 tents.

14 “(3) WEIGHT RESTRICTION.—A delivery seller
15 shall not sell, offer for sale, deliver, or cause to be
16 delivered in any single sale or single delivery any
17 cigarettes or smokeless tobacco weighing more than
18 10 pounds.

19 “(4) AGE VERIFICATION.—

20 “(A) IN GENERAL.—A delivery seller who
21 mails or ships tobacco products—

22 “(i) shall not sell, deliver, or cause to
23 be delivered any tobacco products to a per-
24 son under the minimum age required for
25 the legal sale or purchase of tobacco prod-

1 ucts, as determined by the applicable law
2 at the place of delivery;

3 “(ii) shall use a method of mailing or
4 shipping that requires—

5 “(I) the purchaser placing the
6 delivery sale order, or an adult who is
7 at least the minimum age required for
8 the legal sale or purchase of tobacco
9 products, as determined by the appli-
10 cable law at the place of delivery, to
11 sign to accept delivery of the shipping
12 container at the delivery address; and

13 “(II) the person who signs to ac-
14 cept delivery of the shipping container
15 to provide proof, in the form of a
16 valid, government-issued identification
17 bearing a photograph of the indi-
18 vidual, that the person is at least the
19 minimum age required for the legal
20 sale or purchase of tobacco products,
21 as determined by the applicable law at
22 the place of delivery; and

23 “(iii) shall not accept a delivery sale
24 order from a person without—

1 “(I) obtaining the full name,
2 birth date, and residential address of
3 that person; and

4 “(II) verifying the information
5 provided in subclause (I), through the
6 use of a commercially available data-
7 base or aggregate of databases, con-
8 sisting primarily of data from govern-
9 ment sources, that are regularly used
10 by government and businesses for the
11 purpose of age and identity
12 verification and authentication, to en-
13 sure that the purchaser is at least the
14 minimum age required for the legal
15 sale or purchase of tobacco products,
16 as determined by the applicable law at
17 the place of delivery.

18 “(B) LIMITATION.—No database being
19 used for age and identity verification under
20 subparagraph (A)(iii) shall be in the possession
21 or under the control of the delivery seller, or be
22 subject to any changes or supplementation by
23 the delivery seller.

24 “(c) RECORDS.—

1 “(1) IN GENERAL.—Each delivery seller shall
2 keep a record of any delivery sale, including all of
3 the information described in section 2(a)(2), orga-
4 nized by the State, and within such State, by the
5 city or town and by zip code, into which such deliv-
6 ery sale is so made.

7 “(2) RECORD RETENTION.—Records of a deliv-
8 ery sale shall be kept as described in paragraph (1)
9 in the year in which the delivery sale is made and
10 for the next 4 years.

11 “(3) ACCESS FOR OFFICIALS.—Records kept
12 under paragraph (1) shall be made available to to-
13 bacco tax administrators of the States, to local gov-
14 ernments and Indian tribes that apply their own
15 local or tribal taxes on cigarettes or smokeless to-
16 bacco, to the attorneys general of the States, to the
17 chief law enforcement officers of such local govern-
18 ments and Indian tribes, and to the Attorney Gen-
19 eral in order to ensure the compliance of persons
20 making delivery sales with the requirements of this
21 Act.

22 “(d) DELIVERY.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), no delivery seller may sell or deliver to
25 any consumer, or tender to any common carrier or

1 other delivery service, any cigarettes or smokeless to-
2 bacco pursuant to a delivery sale unless, in advance
3 of the sale, delivery, or tender—

4 “(A) any cigarette or smokeless tobacco ex-
5 cise tax that is imposed by the State in which
6 the cigarettes or smokeless tobacco are to be
7 delivered has been paid to the State;

8 “(B) any cigarette or smokeless tobacco
9 excise tax that is imposed by the local govern-
10 ment of the place in which the cigarettes or
11 smokeless tobacco are to be delivered has been
12 paid to the local government; and

13 “(C) any required stamps or other indicia
14 that such excise tax has been paid are properly
15 affixed or applied to the cigarettes or smokeless
16 tobacco.

17 “(2) EXCEPTION.—Paragraph (1) does not
18 apply to a delivery sale of smokeless tobacco if the
19 law of the State or local government of the place
20 where the smokeless tobacco is to be delivered re-
21 quires or otherwise provides that delivery sellers col-
22 lect the excise tax from the consumer and remit the
23 excise tax to the State or local government, and the
24 delivery seller complies with the requirement.

1 “(e) LIST OF UNREGISTERED OR NONCOMPLIANT
2 DELIVERY SELLERS.—

3 “(1) IN GENERAL.—

4 “(A) INITIAL LIST.—Not later than 90
5 days after this subsection goes into effect under
6 the Prevent All Cigarette Trafficking Act of
7 2009, the Attorney General shall compile a list
8 of delivery sellers of cigarettes or smokeless to-
9 bacco that have not registered with the Attor-
10 ney General pursuant to section 2(a), or that
11 are otherwise not in compliance with this Act,
12 and—

13 “(i) distribute the list to—

14 “(I) the attorney general and tax
15 administrator of every State;

16 “(II) common carriers and other
17 persons that deliver small packages to
18 consumers in interstate commerce, in-
19 cluding the United States Postal Serv-
20 ice; and

21 “(III) any other persons who the
22 Attorney General believes can promote
23 the effective enforcement of this Act;
24 and

1 “(ii) publicize and make the list avail-
2 able to any other person engaged in the
3 business of interstate deliveries or who de-
4 livers cigarettes or smokeless tobacco in or
5 into any State.

6 “(B) LIST CONTENTS.—To the extent
7 known, the Attorney General shall include, for
8 each delivery seller on the list described in sub-
9 paragraph (A)—

10 “(i) all names the delivery seller uses
11 or has used in the transaction of its busi-
12 ness or on packages delivered to cus-
13 tomers;

14 “(ii) all addresses from which the de-
15 livery seller does or has done business, or
16 ships or has shipped cigarettes or smoke-
17 less tobacco;

18 “(iii) the website addresses, primary
19 e-mail address, and phone number of the
20 delivery seller; and

21 “(iv) any other information that the
22 Attorney General determines would facili-
23 tate compliance with this subsection by re-
24 cipients of the list.

1 “(C) UPDATING.—The Attorney General
2 shall update and distribute the list at least once
3 every 4 months, and may distribute the list and
4 any updates by regular mail, electronic mail, or
5 any other reasonable means, or by providing re-
6 cipients with access to the list through a non-
7 public website that the Attorney General regu-
8 larly updates.

9 “(D) STATE, LOCAL, OR TRIBAL ADDI-
10 TIONS.—The Attorney General shall include in
11 the list under subparagraph (A) any noncom-
12 plying delivery sellers identified by any State,
13 local, or tribal government under paragraph
14 (5), and shall distribute the list to the attorney
15 general or chief law enforcement official and
16 the tax administrator of any government sub-
17 mitting any such information, and to any com-
18 mon carriers or other persons who deliver small
19 packages to consumers identified by any gov-
20 ernment pursuant to paragraph (5).

21 “(E) ACCURACY AND COMPLETENESS OF
22 LIST OF NONCOMPLYING DELIVERY SELLERS.—
23 In preparing and revising the list required by
24 subparagraph (A), the Attorney General shall—

1 “(i) use reasonable procedures to en-
2 sure maximum possible accuracy and com-
3 pleteness of the records and information
4 relied on for the purpose of determining
5 that such delivery seller is noncomplying;

6 “(ii) not later than 14 days prior to
7 including any delivery seller on such list,
8 make a reasonable attempt to send notice
9 to the delivery seller by letter, electronic
10 mail, or other means that the delivery sell-
11 er is being placed on such list, with that
12 notice citing the relevant provisions of this
13 Act and the specific reasons for being
14 placed on such list;

15 “(iii) provide an opportunity to such
16 delivery seller to challenge placement on
17 such list;

18 “(iv) investigate each such challenge
19 by contacting the relevant Federal, State,
20 tribal, and local law enforcement officials,
21 and provide the specific findings and re-
22 sults of such investigation to such delivery
23 seller not later than 30 days after the chal-
24 lenge is made; and

1 “(v) upon finding that any placement
2 is inaccurate, incomplete, or cannot be
3 verified, promptly delete such delivery sell-
4 er from the list as appropriate and notify
5 each appropriate Federal, State, tribal,
6 and local authority of such finding.

7 “(F) CONFIDENTIALITY.—The list distrib-
8 uted pursuant to subparagraph (A) shall be
9 confidential, and any person receiving the list
10 shall maintain the confidentiality of the list but
11 may deliver the list, for enforcement purposes,
12 to any government official or to any common
13 carrier or other person that delivers tobacco
14 products or small packages to consumers. Noth-
15 ing in this section shall prohibit a common car-
16 rier, the United States Postal Service, or any
17 other person receiving the list from discussing
18 with a listed delivery seller the delivery seller’s
19 inclusion on the list and the resulting effects on
20 any services requested by such listed delivery
21 seller.

22 “(2) PROHIBITION ON DELIVERY.—

23 “(A) IN GENERAL.—Commencing on the
24 date that is 60 days after the date of the initial
25 distribution or availability of the list under

1 paragraph (1)(A), no person who receives the
2 list under paragraph (1), and no person who
3 delivers cigarettes or smokeless tobacco to con-
4 sumers, shall knowingly complete, cause to be
5 completed, or complete its portion of a delivery
6 of any package for any person whose name and
7 address are on the list, unless—

8 “(i) the person making the delivery
9 knows or believes in good faith that the
10 item does not include cigarettes or smoke-
11 less tobacco;

12 “(ii) the delivery is made to a person
13 lawfully engaged in the business of manu-
14 facturing, distributing, or selling cigarettes
15 or smokeless tobacco; or

16 “(iii) the package being delivered
17 weighs more than 100 pounds and the per-
18 son making the delivery does not know or
19 have reasonable cause to believe that the
20 package contains cigarettes or smokeless
21 tobacco.

22 “(B) IMPLEMENTATION OF UPDATES.—
23 Commencing on the date that is 30 days after
24 the date of the distribution or availability of
25 any updates or corrections to the list under

1 paragraph (1), all recipients and all common
2 carriers or other persons that deliver cigarettes
3 or smokeless tobacco to consumers shall be sub-
4 ject to subparagraph (A) in regard to such cor-
5 rections or updates.

6 “(C) EXEMPTIONS.—Subparagraphs (A)
7 and (B), subsection (b)(2), and any other re-
8 quirements or restrictions placed directly on
9 common carriers elsewhere in this subsection,
10 shall not apply to a common carrier that is sub-
11 ject to a settlement agreement relating to to-
12 bacco product deliveries to consumers or, if any
13 such settlement agreement to which the com-
14 mon carrier was a party is terminated or other-
15 wise becomes inactive, is administering and en-
16 forcing, on a nationwide basis, policies and
17 practices that are at least as stringent as any
18 such agreement. For the purposes of this sec-
19 tion, ‘settlement agreement’ shall be defined to
20 include the Assurance of Discontinuance en-
21 tered into by the Attorney General of New York
22 and DHL Holdings USA, Inc. and DHL Ex-
23 press (USA), Inc. on or about July 1, 2005, the
24 Assurance of Discontinuance entered into by
25 the Attorney General of New York and United

1 Parcel Service, Inc. on or about October 21,
2 2005, and the Assurance of Compliance entered
3 into by the Attorney General of New York and
4 Federal Express Corporation and FedEx
5 Ground Package Systems, Inc. on or about
6 February 3, 2006, so long as each is honored
7 nationwide to block illegal deliveries of ciga-
8 rettes or smokeless tobacco to consumers, and
9 also includes any other active agreement be-
10 tween a common carrier and the States that op-
11 erates nationwide to ensure that no deliveries of
12 cigarettes and smokeless tobacco shall be made
13 to consumers for illegally operating Internet or
14 mail-order sellers and that any such deliveries
15 to consumers shall not be made to minors or
16 without payment to the States and localities
17 where the consumers are located of all taxes on
18 the tobacco products.

19 “(3) SHIPMENTS FROM PERSONS ON LIST.—

20 “(A) IN GENERAL.—In the event that a
21 common carrier or other delivery service delays
22 or interrupts the delivery of a package it has in
23 its possession because it determines or has rea-
24 son to believe that the person ordering the de-
25 livery is on a list distributed under paragraph

1 (1), and that clauses (i), (ii), and (iii) of para-
2 graph (2)(a) do not apply—

3 “(i) the person ordering the delivery
4 shall be obligated to pay—

5 “(I) the common carrier or other
6 delivery service as if the delivery of
7 the package had been timely com-
8 pleted; and

9 “(II) if the package is not deliv-
10 erable, any reasonable additional fee
11 or charge levied by the common car-
12 rier or other delivery service to cover
13 its extra costs and inconvenience and
14 to serve as a disincentive against such
15 noncomplying delivery orders; and

16 “(ii) if the package is determined not
17 to be deliverable, the common carrier or
18 other delivery service shall offer to provide
19 the package and its contents to a Federal,
20 State, or local law enforcement agency.

21 “(B) RECORDS.—A common carrier or
22 other delivery service shall maintain, for a pe-
23 riod of 5 years, any records kept in the ordi-
24 nary course of business relating to any deliv-
25 eries interrupted pursuant to this paragraph

1 and provide that information, upon request, to
2 the Attorney General or to the attorney general
3 or chief law enforcement official or tax adminis-
4 trator of any State, local, or tribal government.

5 “(C) CONFIDENTIALITY.—Any person re-
6 ceiving records under subparagraph (B) shall
7 use such records solely for the purposes of the
8 enforcement of this Act and the collection of
9 any taxes owed on related sales of cigarettes
10 and smokeless tobacco, and shall keep confiden-
11 tial any personal information in such records
12 not otherwise required for such purposes.

13 “(4) PREEMPTION.—

14 “(A) IN GENERAL.—No State, local, or
15 tribal government, nor any political authority of
16 2 or more State, local, or tribal governments,
17 may enact or enforce any law or regulation re-
18 lating to delivery sales that restricts deliveries
19 of cigarettes or smokeless tobacco to consumers
20 by common carriers or other delivery services
21 on behalf of delivery sellers by—

22 “(i) requiring that the common carrier
23 or other delivery service verify the age or
24 identity of the consumer accepting the de-
25 livery by requiring the person who signs to

1 accept delivery of the shipping container to
2 provide proof, in the form of a valid, gov-
3 ernment-issued identification bearing a
4 photograph of the individual, that such
5 person is at least the minimum age re-
6 quired for the legal sale or purchase of to-
7 bacco products, as determined by either
8 State or local law at the place of delivery;

9 “(ii) requiring that the common car-
10 rier or other delivery service obtain a sig-
11 nature from the consumer accepting the
12 delivery;

13 “(iii) requiring that the common car-
14 rier or other delivery service verify that all
15 applicable taxes have been paid;

16 “(iv) requiring that packages delivered
17 by the common carrier or other delivery
18 service contain any particular labels, no-
19 tice, or markings; or

20 “(v) prohibiting common carriers or
21 other delivery services from making deliv-
22 eries on the basis of whether the delivery
23 seller is or is not identified on any list of
24 delivery sellers maintained and distributed

1 by any entity other than the Federal Gov-
2 ernment.

3 “(B) RELATIONSHIP TO OTHER LAWS.—
4 Except as provided in subparagraph (C), noth-
5 ing in this paragraph shall be construed to nul-
6 lify, expand, restrict, or otherwise amend or
7 modify—

8 “(i) section 14501(c)(1) or
9 41713(b)(4) of title 49, United States
10 Code;

11 “(ii) any other restrictions in Federal
12 law on the ability of State, local, or tribal
13 governments to regulate common carriers;
14 or

15 “(iii) any provision of State, local, or
16 tribal law regulating common carriers that
17 is described in section 14501(c)(2) or
18 41713(b)(4)(B) of title 49 of the United
19 States Code.

20 “(C) STATE LAWS PROHIBITING DELIVERY
21 SALES.—Nothing in the Prevent All Cigarette
22 Trafficking Act of 2009, the amendments made
23 by that Act, or in any other Federal statute
24 shall be construed to preempt, supersede, or
25 otherwise limit or restrict State laws prohibiting

1 the delivery sale, or the shipment or delivery
2 pursuant to a delivery sale, of cigarettes or
3 other tobacco products to individual consumers
4 or personal residences except that no State may
5 enforce against a common carrier a law prohib-
6 iting the delivery of cigarettes or other tobacco
7 products to individual consumers or personal
8 residences without proof that the common car-
9 rier is not exempt under paragraph (2)(C) of
10 this subsection.

11 “(5) STATE, LOCAL, AND TRIBAL ADDITIONS.—

12 “(A) IN GENERAL.—Any State, local, or
13 tribal government shall provide the Attorney
14 General with—

15 “(i) all known names, addresses,
16 website addresses, and other primary con-
17 tact information of any delivery seller that
18 offers for sale or makes sales of cigarettes
19 or smokeless tobacco in or into the State,
20 locality, or tribal land involved, but has
21 failed to register with or make reports to
22 the respective tax administrator as re-
23 quired by this Act, or that has been found
24 in a legal proceeding to have otherwise
25 failed to comply with this Act; and

1 “(ii) a list of common carriers and
2 other persons who make deliveries of ciga-
3 rettes or smokeless tobacco in or into the
4 State, locality, or tribal land.

5 “(B) UPDATES.—Any government pro-
6 viding a list to the Attorney General under sub-
7 paragraph (A) shall also provide updates and
8 corrections every 4 months until such time as
9 such government notifies the Attorney General
10 in writing that such government no longer de-
11 sires to submit such information to supplement
12 the list maintained and distributed by the At-
13 torney General under paragraph (1).

14 “(C) REMOVAL AFTER WITHDRAWAL.—
15 Upon receiving written notice that a govern-
16 ment no longer desires to submit information
17 under subparagraph (A), the Attorney General
18 shall remove from the list compiled under para-
19 graph (1) any persons that are on the list solely
20 because of such government’s prior submissions
21 of its list of noncomplying delivery sellers of
22 cigarettes or smokeless tobacco or its subse-
23 quent updates and corrections.

24 “(6) DEADLINE TO INCORPORATE ADDI-
25 TIONS.—The Attorney General shall—

1 “(A) include any delivery seller identified
2 and submitted by a State, local, or tribal gov-
3 ernment under paragraph (5) in any list or up-
4 date that is distributed or made available under
5 paragraph (1) on or after the date that is 30
6 days after the date on which the information is
7 received by the Attorney General; and

8 “(B) distribute any such list or update to
9 any common carrier or other person who makes
10 deliveries of cigarettes or smokeless tobacco
11 that has been identified and submitted by a
12 government pursuant to paragraph (5).

13 “(7) NOTICE TO DELIVERY SELLERS.—Not
14 later than 14 days prior to including any delivery
15 seller on the initial list distributed or made available
16 under paragraph (1), or on any subsequent list or
17 update for the first time, the Attorney General shall
18 make a reasonable attempt to send notice to the de-
19 livery seller by letter, electronic mail, or other means
20 that the delivery seller is being placed on such list
21 or update, with that notice citing the relevant provi-
22 sions of this Act.

23 “(8) LIMITATIONS.—

24 “(A) IN GENERAL.—Any common carrier
25 or other person making a delivery subject to

1 this subsection shall not be required or other-
2 wise obligated to—

3 “(i) determine whether any list dis-
4 tributed or made available under para-
5 graph (1) is complete, accurate, or up-to-
6 date;

7 “(ii) determine whether a person or-
8 dering a delivery is in compliance with this
9 Act; or

10 “(iii) open or inspect, pursuant to this
11 Act, any package being delivered to deter-
12 mine its contents.

13 “(B) ALTERNATE NAMES.—Any common
14 carrier or other person making a delivery sub-
15 ject to this subsection shall not be required to
16 make any inquiries or otherwise determine
17 whether a person ordering a delivery is a deliv-
18 ery seller on the list under paragraph (1) who
19 is using a different name or address in order to
20 evade the related delivery restrictions, but shall
21 not knowingly deliver any packages to con-
22 sumers for any such delivery seller who the
23 common carrier or other delivery service knows
24 is a delivery seller who is on the list under
25 paragraph (1) but is using a different name or

1 address to evade the delivery restrictions of
2 paragraph (2).

3 “(C) PENALTIES.—Any common carrier or
4 person in the business of delivering packages on
5 behalf of other persons shall not be subject to
6 any penalty under section 14101(a) of title 49,
7 United States Code, or any other provision of
8 law for—

9 “(i) not making any specific delivery,
10 or any deliveries at all, on behalf of any
11 person on the list under paragraph (1);

12 “(ii) refusing, as a matter of regular
13 practice and procedure, to make any deliv-
14 eries, or any deliveries in certain States, of
15 any cigarettes or smokeless tobacco for any
16 person or for any person not in the busi-
17 ness of manufacturing, distributing, or
18 selling cigarettes or smokeless tobacco; or

19 “(iii) delaying or not making a deliv-
20 ery for any person because of reasonable
21 efforts to comply with this Act.

22 “(D) OTHER LIMITS.—Section 2 and sub-
23 sections (a), (b), (c), and (d) of this section
24 shall not be interpreted to impose any respon-

1 sibilities, requirements, or liability on common
2 carriers.

3 “(f) PRESUMPTION.—For purposes of this Act, a de-
4 livery sale shall be deemed to have occurred in the State
5 and place where the buyer obtains personal possession of
6 the cigarettes or smokeless tobacco, and a delivery pursu-
7 ant to a delivery sale is deemed to have been initiated or
8 ordered by the delivery seller.”.

9 (d) PENALTIES.—The Jenkins Act is amended by
10 striking section 3 and inserting the following:

11 **“SEC. 3. PENALTIES.**

12 “(a) CRIMINAL PENALTIES.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), whoever knowingly violates any provision
15 of this Act shall be guilty of a felony and shall be
16 imprisoned not more than 3 years, fined under title
17 18, United States Code, or both.

18 “(2) EXCEPTIONS.—

19 “(A) GOVERNMENTS.—Paragraph (1) shall
20 not apply to a State, local, or tribal govern-
21 ment.

22 “(B) DELIVERY VIOLATIONS.—A common
23 carrier or independent delivery service, or em-
24 ployee of a common carrier or independent de-
25 livery service, shall be subject to criminal pen-

1 alties under paragraph (1) for a violation of
2 section 2A(e) only if the violation is committed
3 knowingly—

4 “(i) as consideration for the receipt
5 of, or as consideration for a promise or
6 agreement to pay, anything of pecuniary
7 value; or

8 “(ii) for the purpose of assisting a de-
9 livery seller to violate, or otherwise evading
10 compliance with, section 2A.

11 “(b) CIVIL PENALTIES.—

12 “(1) IN GENERAL.—Except as provided in para-
13 graph (3), whoever violates any provision of this Act
14 shall be subject to a civil penalty in an amount not
15 to exceed—

16 “(A) in the case of a delivery seller, the
17 greater of—

18 “(i) \$5,000 in the case of the first
19 violation, or \$10,000 for any other viola-
20 tion; or

21 “(ii) for any violation, 2 percent of
22 the gross sales of cigarettes or smokeless
23 tobacco of such person during the 1-year
24 period ending on the date of the violation.

1 “(B) in the case of a common carrier or
2 other delivery service, \$2,500 in the case of a
3 first violation, or \$5,000 for any violation with-
4 in 1 year of a prior violation.

5 “(2) RELATION TO OTHER PENALTIES.—A civil
6 penalty imposed under paragraph (1) for a violation
7 of this Act shall be imposed in addition to any crimi-
8 nal penalty under subsection (a) and any other dam-
9 ages, equitable relief, or injunctive relief awarded by
10 the court, including the payment of any unpaid taxes
11 to the appropriate Federal, State, local, or tribal
12 governments.

13 “(3) EXCEPTIONS.—

14 “(A) DELIVERY VIOLATIONS.—An em-
15 ployee of a common carrier or independent de-
16 livery service shall be subject to civil penalties
17 under paragraph (1) for a violation of section
18 2A(e) only if the violation is committed inten-
19 tionally—

20 “(i) as consideration for the receipt
21 of, or as consideration for a promise or
22 agreement to pay, anything of pecuniary
23 value; or

1 “(ii) for the purpose of assisting a de-
2 livery seller to violate, or otherwise evading
3 compliance with, section 2A.

4 “(B) OTHER LIMITATIONS.—No common
5 carrier or independent delivery service shall be
6 subject to civil penalties under paragraph (1)
7 for a violation of section 2A(e) if—

8 “(i) the common carrier or inde-
9 pendent delivery service has implemented
10 and enforces effective policies and practices
11 for complying with that section; or

12 “(ii) the violation consists of an em-
13 ployee of the common carrier or inde-
14 pendent delivery service who physically re-
15 ceives and processes orders, picks up pack-
16 ages, processes packages, or makes deliv-
17 eries, taking actions that are outside the
18 scope of employment of the employee, or
19 that violate the implemented and enforced
20 policies of the common carrier or inde-
21 pendent delivery service described in clause
22 (i).”.

23 (e) ENFORCEMENT.—The Jenkins Act is amended by
24 striking section 4 and inserting the following:

1 **“SEC. 4. ENFORCEMENT.**

2 “(a) IN GENERAL.—The United States district
3 courts shall have jurisdiction to prevent and restrain viola-
4 tions of this Act and to provide other appropriate injunc-
5 tive or equitable relief, including money damages, for such
6 violations.

7 “(b) AUTHORITY OF THE ATTORNEY GENERAL.—
8 The Attorney General shall administer and enforce the
9 provisions of this Act.

10 “(c) STATE, LOCAL, AND TRIBAL ENFORCEMENT.—

11 “(1) IN GENERAL.—

12 “(A) STANDING.—A State, through its at-
13 torney general, or a local government or Indian
14 tribe that levies a tax subject to section
15 2A(a)(3), through its chief law enforcement of-
16 ficer, may bring an action in a United States
17 district court to prevent and restrain violations
18 of this Act by any person or to obtain any other
19 appropriate relief from any person for violations
20 of this Act, including civil penalties, money
21 damages, and injunctive or other equitable re-
22 lief.

23 “(B) SOVEREIGN IMMUNITY.—Nothing in
24 this Act shall be deemed to abrogate or con-
25 stitute a waiver of any sovereign immunity of a
26 State or local government or Indian tribe

1 against any unconsented lawsuit under this Act,
2 or otherwise to restrict, expand, or modify any
3 sovereign immunity of a State or local govern-
4 ment or Indian tribe.

5 “(2) PROVISION OF INFORMATION.—A State,
6 through its attorney general, or a local government
7 or Indian tribe that levies a tax subject to section
8 2A(a)(3), through its chief law enforcement officer,
9 may provide evidence of a violation of this Act by
10 any person not subject to State, local, or tribal gov-
11 ernment enforcement actions for violations of this
12 Act to the Attorney General or a United States at-
13 torney, who shall take appropriate actions to enforce
14 the provisions of this Act.

15 “(3) USE OF PENALTIES COLLECTED.—

16 “(A) IN GENERAL.—There is established a
17 separate account in the Treasury known as the
18 ‘PACT Anti-Trafficking Fund’. Notwith-
19 standing any other provision of law and subject
20 to subparagraph (B), an amount equal to 50
21 percent of any criminal and civil penalties col-
22 lected by the United States Government in en-
23 forcing the provisions of this Act shall be trans-
24 ferred into the PACT Anti-Trafficking Fund
25 and shall be available to the Attorney General

1 for purposes of enforcing the provisions of this
2 Act and other laws relating to contraband to-
3 bacco products.

4 “(B) ALLOCATION OF FUNDS.—Of the
5 amount available to the Attorney General under
6 subparagraph (A), not less than 50 percent
7 shall be made available only to the agencies and
8 offices within the Department of Justice that
9 were responsible for the enforcement actions in
10 which the penalties concerned were imposed or
11 for any underlying investigations.

12 “(4) NONEXCLUSIVITY OF REMEDY.—

13 “(A) IN GENERAL.—The remedies avail-
14 able under this section and section 3 are in ad-
15 dition to any other remedies available under
16 Federal, State, local, tribal, or other law.

17 “(B) STATE COURT PROCEEDINGS.—Noth-
18 ing in this Act shall be construed to expand, re-
19 strict, or otherwise modify any right of an au-
20 thorized State official to proceed in State court,
21 or take other enforcement actions, on the basis
22 of an alleged violation of State or other law.

23 “(C) TRIBAL COURT PROCEEDINGS.—
24 Nothing in this Act shall be construed to ex-
25 pand, restrict, or otherwise modify any right of

1 an authorized Indian tribal government official
2 to proceed in tribal court, or take other enforce-
3 ment actions, on the basis of an alleged viola-
4 tion of tribal law.

5 “(D) LOCAL GOVERNMENT ENFORCE-
6 MENT.—Nothing in this Act shall be construed
7 to expand, restrict, or otherwise modify any
8 right of an authorized local government official
9 to proceed in State court, or take other enforce-
10 ment actions, on the basis of an alleged viola-
11 tion of local or other law.

12 “(d) PERSONS DEALING IN TOBACCO PRODUCTS.—
13 Any person who holds a permit under section 5712 of the
14 Internal Revenue Code of 1986 (regarding permitting of
15 manufacturers and importers of tobacco products and ex-
16 port warehouse proprietors) may bring an action in an ap-
17 propriate United States district court to prevent and re-
18 strain violations of this Act by any person other than a
19 State, local, or tribal government.

20 “(e) NOTICE.—

21 “(1) PERSONS DEALING IN TOBACCO PROD-
22 UCTS.—Any person who commences a civil action
23 under subsection (d) shall inform the Attorney Gen-
24 eral of the action.

1 “(2) STATE, LOCAL, AND TRIBAL ACTIONS.—It
2 is the sense of Congress that the attorney general of
3 any State, or chief law enforcement officer of any lo-
4 cality or tribe, that commences a civil action under
5 this section should inform the Attorney General of
6 the action.

7 “(f) PUBLIC NOTICE.—

8 “(1) IN GENERAL.—The Attorney General shall
9 make available to the public, by posting such infor-
10 mation on the Internet and by other appropriate
11 means, information regarding all enforcement ac-
12 tions brought by the United States, or reported to
13 the Attorney General, under this section, including
14 information regarding the resolution of such actions
15 and how the Attorney General has responded to re-
16 ferrals of evidence of violations pursuant to sub-
17 section (c)(2).

18 “(2) REPORTS TO CONGRESS.—The Attorney
19 General shall submit to Congress, one year after the
20 date of the enactment of the Prevent All Cigarette
21 Trafficking Act of 2009, at the end of each of the
22 four succeeding 1-year periods, a report containing
23 the information described in paragraph (1).”.

1 **SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TO-**
2 **BACCO AS NONMAILABLE MATTER.**

3 (a) IN GENERAL.—Chapter 83 of title 18, United
4 States Code, is amended by inserting after section 1716D
5 the following:

6 **“§ 1716E. Tobacco products as nonmailable**

7 “(a) PROHIBITION.—All cigarettes and smokeless to-
8 bacco (as those terms are defined in section 1 of the Act
9 of October 19, 1949, commonly referred to as the Jenkins
10 Act) are nonmailable and shall not be deposited in or car-
11 ried through the mails. The United States Postal Service
12 shall not accept for delivery or transmit through the mails
13 any package that it knows or has reasonable cause to be-
14 lieve contains any cigarettes or smokeless tobacco made
15 nonmailable by this subsection. For the purposes of sub-
16 section (a) reasonable cause includes—

17 “(1) a statement on a publicly available website,
18 or an advertisement, by any person that such person
19 will mail matter which is nonmailable under this sec-
20 tion in return for payment; or

21 “(2) the placement of the person on the list cre-
22 ated under section 2A(e) of the Jenkins Act.

23 “(b) EXCEPTIONS.—This section shall not apply to
24 the following:

1 “(1) CIGARS.—Cigars (as that term is defined
2 in section 5702(a) of the Internal Revenue Code of
3 1986).

4 “(2) GEOGRAPHIC EXCEPTION.—Mailings with-
5 in the State of Alaska or within the State of Hawaii.

6 “(3) BUSINESS PURPOSES.—Tobacco products
7 mailed only for business purposes between legally
8 operating businesses that have all applicable State
9 and Federal Government licenses or permits and are
10 engaged in tobacco product manufacturing, distribu-
11 tion, wholesale, export, import, testing, investigation,
12 or research, or for regulatory purposes between any
13 such businesses and State or Federal Government
14 regulatory agencies, pursuant to a final rule that the
15 Postal Service shall issue, not later than 180 days
16 after the date of the enactment of the Prevent All
17 Cigarette Trafficking Act of 2009, which shall estab-
18 lish the standards and requirements that apply to all
19 such mailings, which shall include the following:

20 “(A) The Postal Service shall verify that
21 any person submitting an otherwise nonmailable
22 tobacco product into the mails as authorized by
23 this paragraph is a business or government
24 agency permitted to make such mailings pursu-
25 ant to this section and the related final rule.

1 “(B) The Postal Service shall ensure that
2 any recipient of an otherwise nonmailable to-
3 bacco product sent through the mails pursuant
4 to this paragraph is a business or government
5 agency that may lawfully receive such product.

6 “(C) The mailings shall be sent through
7 the Postal Service’s systems that provide for
8 the tracking and confirmation of the delivery.

9 “(D) The identities of the business or gov-
10 ernment entity submitting the mailing con-
11 taining otherwise nonmailable tobacco products
12 for delivery and the business or government en-
13 tity receiving the mailing shall be clearly set
14 forth on the package and such information shall
15 be kept in Postal Service records and made
16 available to the Postal Service, the Attorney
17 General, and to persons eligible to bring en-
18 forcement actions pursuant to section 3(d) of
19 the Prevent All Cigarette Trafficking Act of
20 2009 for a period of at least three years there-
21 after.

22 “(E) The mailings shall be marked with a
23 Postal Service label or marking that makes it
24 clear to Postal Service employees that it is a
25 permitted mailing of otherwise nonmailable to-

1 bacco products that may be delivered only to a
2 permitted government agency or business and
3 may not be delivered to any residence or indi-
4 vidual person.

5 “(F) The mailing shall be delivered only to
6 a verified adult employee of the recipient busi-
7 ness or government agency, who shall be re-
8 quired to sign for the mailing.

9 “(4) CERTAIN INDIVIDUALS.—Tobacco products
10 mailed by adult individuals for noncommercial pur-
11 poses, including the return of a damaged or unac-
12 ceptable tobacco product to its manufacturer, pursu-
13 ant to a final rule that the Postal Service shall issue,
14 not later than 180 days after the date of the enact-
15 ment of the Prevent All Cigarette Trafficking Act of
16 2009, which shall establish the standards and re-
17 quirements that apply to all such mailings, which
18 shall include the following:

19 “(A) The Postal Service shall verify that
20 any person submitting an otherwise nonmailable
21 tobacco product into the mails as authorized by
22 this section is the individual identified on the
23 return address label of the package and is an
24 adult.

1 “(B) For a mailing to an individual, the
2 Postal Service shall require the person submit-
3 ting the otherwise nonmailable tobacco product
4 into the mails as authorized by this subsection
5 to affirm that the recipient is an adult.

6 “(C) The package shall not weigh more
7 than 10 ounces.

8 “(D) The mailing shall be sent through the
9 Postal Service’s systems that provide for the
10 tracking and confirmation of the delivery.

11 “(E) No package shall be delivered or
12 placed in the possession of any individual who
13 is not a verified adult. For a mailing to an indi-
14 vidual, the Postal Service shall deliver the pack-
15 age only to the verified adult recipient at the
16 recipient address or transfer it for delivery to
17 an Air/Army Postal Office (APO) or Fleet
18 Postal Office (FPO) number designated in the
19 recipient address.

20 “(F) No person shall initiate more than
21 ten such mailings in any thirty-day period.

22 “(5) EXCEPTION FOR MAILINGS FOR CONSUMER
23 TESTING BY MANUFACTURERS.—Subject to para-
24 graph (8), nothing in this Act shall preclude a le-
25 gally operating cigarette manufacturer operating on

1 its own or through its legally authorized agent from
2 using the Postal Service to mail cigarettes to verified
3 adult smokers solely for consumer testing purposes,
4 provided that—

5 “(A) the cigarette manufacturer has a fed-
6 eral permit, in good standing, pursuant to sec-
7 tion 5713 of the Internal Revenue Code of
8 1986;

9 “(B) any package of cigarettes mailed pur-
10 suant to this paragraph shall contain no more
11 than 12 packs of cigarettes (240 cigarettes);

12 “(C) no individual shall receive more than
13 1 package of cigarettes per manufacturer pur-
14 suant to this paragraph in any 30-day period;

15 “(D) all taxes on the cigarettes levied by
16 the State and locality of delivery have been paid
17 to the State and locality prior to delivery, and
18 tax stamps or other tax-payment indicia have
19 been affixed to the cigarettes as required by
20 law;

21 “(E)(i) the recipient has not made any
22 payments of any kind in exchange for receiving
23 the cigarettes;

1 “(ii) the recipient is paid a fee by the man-
2 ufacturer or manufacturer’s agent for participa-
3 tion in consumer product tests; and

4 “(iii) the recipient, in connection with the
5 tests, evaluates the cigarettes and provides
6 feedback to the manufacturer or agent;

7 “(F) the mailing is made pursuant to a
8 final rule that the Postal Service shall issue,
9 not later than 180 days after the date of the
10 enactment of the Prevent All Cigarette Traf-
11 ficking Act of 2009, which shall establish stand-
12 ards and requirements that apply to all such
13 mailings, which shall include the following:

14 “(i) The Postal Service shall verify
15 that any person submitting a tobacco prod-
16 uct into the mails pursuant to this para-
17 graph is a manufacturer permitted to
18 make such mailings pursuant to this para-
19 graph, or an agent legally authorized by
20 the manufacturer to submit the tobacco
21 product into the mails on the manufactur-
22 er’s behalf.

23 “(ii) The Postal Service shall require
24 the manufacturer submitting the cigarettes
25 into the mails pursuant to this paragraph

1 to affirm that the manufacturer or its le-
2 gally authorized agent has verified that the
3 recipient is an adult established smoker
4 who has not made any payment for the
5 cigarettes, has formally stated in writing
6 that he or she wishes to receive such mail-
7 ings, and has not withdrawn that agree-
8 ment despite being offered the opportunity
9 to do so by the manufacturer or its legally
10 authorized agent at least once in every 3-
11 month period.

12 “(iii) The Postal Service shall require
13 the manufacturer or its legally authorized
14 agent submitting the cigarettes into the
15 mails pursuant to this paragraph to affirm
16 that the package contains no more than 12
17 packs of cigarettes (240 cigarettes) on
18 which all taxes levied on the cigarettes by
19 the State and locality of delivery have been
20 paid and all related State tax stamps or
21 other tax-payment indicia have been ap-
22 plied.

23 “(iv) The mailings shall be sent
24 through the Postal Service’s systems that
25 provide for the tracking and confirmation

1 of the delivery and all related records shall
2 be kept in Postal Service records and made
3 available to persons enforcing this section
4 for a period of at least 3 years thereafter.

5 “(v) The mailing shall be marked with
6 a Postal Service label or marking that
7 makes it clear to Postal Service employees
8 that it is a permitted mailing of otherwise
9 nonmailable tobacco products that may be
10 delivered only to the named recipient after
11 verifying that the recipient is an adult.

12 “(vi) The Postal Service shall deliver
13 the mailing only to the named recipient
14 and only after verifying that the recipient
15 is an adult.

16 “(6) DEFINITION OF CONSUMER TESTING.—
17 For purposes of this Act, the term ‘consumer test-
18 ing’ means testing limited to formal data collection
19 and analysis for the specific purpose of evaluating
20 the product for quality assurance and benchmarking
21 purposes of cigarette brands or sub-brands among
22 existing adult smokers.

23 “(7) DEFINITION OF ADULT.—For purposes of
24 paragraph (5), the term ‘adult’ means an individual
25 of at least 21 years of age. For purposes of para-

1 graphs (3) and (4), the term ‘adult’ means an indi-
2 vidual of at least the minimum age required for the
3 legal sale or purchase of tobacco products as deter-
4 mined by applicable law at the place the individual
5 is located.

6 “(8) LIMITATIONS.—Paragraph (5) shall not—

7 “(A) permit a mailing of cigarettes to an
8 individual located in any State that prohibits
9 the delivery or shipment of cigarettes to individ-
10 uals in the State, or preempt, limit, or other-
11 wise affect any related State laws; or

12 “(B) permit a manufacturer, directly or
13 through a legally authorized agent, to mail ciga-
14 rettes in any calendar years in a cumulative
15 amount greater than one percent of its total
16 cigarette sales in the United States in the pre-
17 vious calendar year.

18 “(9) UNITED STATES GOVERNMENT AGEN-
19 CIES.—Agencies of the United States Government
20 involved in the consumer testing of tobacco products
21 solely for public health purposes may make mailings
22 pursuant to the same requirements, restrictions, and
23 Postal Service rules and procedures that apply to
24 consumer testing mailings of cigarettes by manufac-
25 turers under paragraph (5), except that no such

1 agency shall be required to pay the recipients for
2 participating in the consumer testing.

3 “(c) SEIZURE AND FORFEITURE.—Any cigarettes or
4 smokeless tobacco made nonmailable by this subsection
5 that are deposited in the mails shall be subject to seizure
6 and forfeiture, pursuant to the procedures set forth in
7 chapter 46 of this title. Any tobacco products so seized
8 and forfeited shall either be destroyed or retained by Gov-
9 ernment officials for the detection or prosecution of crimes
10 or related investigations and then destroyed.

11 “(d) ADDITIONAL PENALTIES.—In addition to any
12 other fines and penalties imposed by this Act for violations
13 of this section, any person violating this section shall be
14 subject to an additional civil penalty in the amount of 10
15 times the retail value of the nonmailable cigarettes or
16 smokeless tobacco, including all Federal, State, and local
17 taxes.

18 “(e) CRIMINAL PENALTY.—Whoever knowingly de-
19 posits for mailing or delivery, or knowingly causes to be
20 delivered by mail, according to the direction thereon, or
21 at any place at which it is directed to be delivered by the
22 person to whom it is addressed, anything that this section
23 declares to be nonmailable matter shall be fined under this
24 title, imprisoned not more than 1 year, or both.

1 “(f) DEFINITION.—As used in this section, the term
2 ‘State’ has the meaning given that term in section
3 1716(k).

4 “(g) USE OF PENALTIES.—There is established a
5 separate account in the Treasury of the United States,
6 to be known as the ‘PACT Postal Service Fund’. Notwith-
7 standing any other provision of law, an amount equal to
8 50 percent of any criminal and civil fines or monetary pen-
9 alties collected by the United States Government in en-
10 forcing the provisions of this subsection shall be trans-
11 ferred into the PACT Postal Service Fund and shall be
12 available to the Postmaster General for the purpose of en-
13 forcing the provisions of this subsection.

14 “(h) COORDINATION OF EFFORTS.—In the enforce-
15 ment of this section, the Postal Service shall cooperate and
16 coordinate its efforts with related enforcement activities
17 of any other Federal agency or of any State, local, or trib-
18 al government, whenever appropriate.”.

19 (b) ACTIONS BY STATE, LOCAL OR TRIBAL GOVERN-
20 MENTS RELATING TO CERTAIN TOBACCO PRODUCTS.—

21 (1) A State, through its attorney general, or a
22 local government or Indian tribe that levies an excise
23 tax on tobacco products, through its chief law en-
24 forcement officer, may in a civil action in a United
25 States district court obtain appropriate relief with

1 respect to a violation of section 1716E of title 18,
2 United States Code. Appropriate relief includes in-
3 junctive and equitable relief and damages equal to
4 the amount of unpaid taxes on tobacco products
5 mailed in violation of that section to addressees in
6 that State.

7 (2) Nothing in this section shall be deemed to
8 abrogate or constitute a waiver of any sovereign im-
9 munity of a State or local government or Indian
10 tribe against any unconsented lawsuit under para-
11 graph (1), or otherwise to restrict, expand, or mod-
12 ify any sovereign immunity of a State or local gov-
13 ernment or Indian tribe.

14 (3) Nothing in this section shall be construed to
15 prohibit an authorized State official from proceeding
16 in State court on the basis of an alleged violation of
17 any general civil or criminal statute of such State.

18 (4) A State, through its attorney general, or a
19 local government or Indian tribe that levies an excise
20 tax on tobacco products, through its chief law en-
21 forcement officer, may provide evidence of a viola-
22 tion of paragraph (1) for commercial purposes by
23 any person not subject to State, local, or tribal gov-
24 ernment enforcement actions for violations of para-
25 graph (1) to the Attorney General, who shall take

1 appropriate actions to enforce the provisions of this
2 subsection.

3 (5) The remedies available under this sub-
4 section are in addition to any other remedies avail-
5 able under Federal, State, local, tribal, or other law.
6 Nothing in this subsection shall be construed to ex-
7 pand, restrict, or otherwise modify any right of an
8 authorized State, local, or tribal government official
9 to proceed in a State, tribal, or other appropriate
10 court, or take other enforcement actions, on the
11 basis of an alleged violation of State, local, tribal, or
12 other law.

13 (c) CLERICAL AMENDMENT.—The table of sections
14 at the beginning of chapter 83 of title 18 is amended by
15 adding after the item relating to section 1716D the fol-
16 lowing new item:

“1716E. Tobacco products as nonmailable.”.

17 **SEC. 4. COMPLIANCE WITH MODEL STATUTE OR QUALI-**
18 **FYING STATUTE.**

19 (a) IN GENERAL.—A Tobacco Product Manufacturer
20 or importer may not sell in, deliver to, or place for delivery
21 sale, or cause to be sold in, delivered to, or placed for deliv-
22 ery sale in a State that is a party to the Master Settlement
23 Agreement, any cigarette manufactured by a Tobacco
24 Product Manufacturer that is not in full compliance with
25 the terms of the Model Statute or Qualifying Statute en-

1 acted by such State requiring funds to be placed into a
2 qualified escrow account under specified conditions, and
3 with any regulations promulgated pursuant to such stat-
4 ute.

5 (b) JURISDICTION TO PREVENT AND RESTRAIN VIO-
6 LATIONS.—

7 (1) IN GENERAL.—The United States district
8 courts shall have jurisdiction to prevent and restrain
9 violations of subsection (a) in accordance with this
10 subsection.

11 (2) INITIATION OF ACTION.—A State, through
12 its attorney general, may bring an action in an ap-
13 propriate United States district court to prevent and
14 restrain violations of subsection (a) by any person.

15 (3) ATTORNEY FEES.—In any action under
16 paragraph (2), a State, through its attorney general,
17 shall be entitled to reasonable attorney fees from a
18 person found to have knowingly violated subsection
19 (a).

20 (4) NONEXCLUSIVITY OF REMEDIES.—The rem-
21 edy available under paragraph (2) is in addition to
22 any other remedies available under Federal, State,
23 or other law. No provision of this Act or any other
24 Federal law shall be held or construed to prohibit or
25 preempt the Master Settlement Agreement, the

1 Model Statute (as defined in the Master Settlement
2 Agreement), any legislation amending or complemen-
3 tary to the Model Statute in effect as of June 1,
4 2006, or any legislation substantially similar to such
5 existing, amending, or complementary legislation
6 hereinafter enacted.

7 (5) OTHER ENFORCEMENT ACTIONS.—Nothing
8 in this subsection shall be construed to prohibit an
9 authorized State official from proceeding in State
10 court or taking other enforcement actions on the
11 basis of an alleged violation of State or other law.

12 (6) AUTHORITY OF THE ATTORNEY GEN-
13 ERAL.—The Attorney General may bring an action
14 in an appropriate United States district court to
15 prevent and restrain violations of subsection (a) by
16 any person.

17 (c) DEFINITIONS.—In this section the following defi-
18 nitions apply:

19 (1) DELIVERY SALE.—The term “delivery sale”
20 means any sale of cigarettes or smokeless tobacco to
21 a consumer if—

22 (A) the consumer submits the order for
23 such sale by means of a telephone or other
24 method of voice transmission, the mails, or the
25 Internet or other online service, or the seller is

1 otherwise not in the physical presence of the
2 buyer when the request for purchase or order is
3 made; or

4 (B) the cigarettes or smokeless tobacco are
5 delivered to the buyer by common carrier, pri-
6 vate delivery service, or other method of remote
7 delivery, or the seller is not in the physical pres-
8 ence of the buyer when the buyer obtains pos-
9 session of the cigarettes or smokeless tobacco.

10 (2) IMPORTER.—The term “importer” means
11 each of the following:

12 (A) SHIPPING OR CONSIGNING.—Any per-
13 son in the United States to whom nontaxpaid
14 tobacco products manufactured in a foreign
15 country, Puerto Rico, the Virgin Islands, or a
16 possession of the United States are shipped or
17 consigned.

18 (B) MANUFACTURING WAREHOUSES.—Any
19 person who removes cigars or cigarettes for sale
20 or consumption in the United States from a
21 customs-bonded manufacturing warehouse.

22 (C) UNLAWFUL IMPORTING.—Any person
23 who smuggles or otherwise unlawfully brings to-
24 bacco products into the United States.

1 (3) MASTER SETTLEMENT AGREEMENT.—The
 2 term “Master Settlement Agreement” means the
 3 agreement executed November 23, 1998, between
 4 the attorneys general of 46 States, the District of
 5 Columbia, the Commonwealth of Puerto Rico, and 4
 6 territories of the United States and certain tobacco
 7 manufacturers.

8 (4) MODEL STATUTE; QUALIFYING STATUTE.—
 9 The terms “Model Statute” and “Qualifying Stat-
 10 ute” means a statute as defined in section
 11 IX(d)(2)(e) of the Master Settlement Agreement.

12 (5) TOBACCO PRODUCT MANUFACTURER.—The
 13 term “Tobacco Product Manufacturer” has the
 14 meaning given that term in section II(uu) of the
 15 Master Settlement Agreement.

16 **SEC. 5. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,**
 17 **FIREARMS, AND EXPLOSIVES OF RECORDS**
 18 **OF CERTAIN CIGARETTE AND SMOKELESS**
 19 **TOBACCO SELLERS; CIVIL PENALTY.**

20 Section 2343(c) of title 18, United States Code, is
 21 amended to read as follows:

22 “(c)(1) Any officer of the Bureau of Alcohol, To-
 23 bacco, Firearms, and Explosives may, during normal busi-
 24 ness hours, enter the premises of any person described in
 25 subsection (a) or (b) for the purposes of inspecting—

1 “(A) any records or information required to be
2 maintained by such person under the provisions of
3 law referred to in this chapter; or

4 “(B) any cigarettes or smokeless tobacco kept
5 or stored by such person at such premises.

6 “(2) The district courts of the United States shall
7 have the authority in a civil action under this subsection
8 to compel inspections authorized by paragraph (1).

9 “(3) Whoever denies access to an officer under para-
10 graph (1), or who fails to comply with an order issued
11 under paragraph (2), shall be subject to a civil penalty
12 in an amount not to exceed \$10,000.”.

13 **SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND**
14 **TRIBAL MATTERS.**

15 (a) IN GENERAL.—Nothing in this Act or the amend-
16 ments made by this Act shall be construed to amend, mod-
17 ify, or otherwise affect—

18 (1) any agreements, compacts, or other inter-
19 governmental arrangements between any State or
20 local government and any government of an Indian
21 tribe (as that term is defined in section 4(e) of the
22 Indian Self-Determination and Education Assistance
23 Act (25 U.S.C. 450b(e)) relating to the collection of
24 taxes on cigarettes or smokeless tobacco sold in In-
25 dian country;

1 (2) any State laws that authorize or otherwise
2 pertain to any such intergovernmental arrangements
3 or create special rules or procedures for the collec-
4 tion of State, local, or tribal taxes on cigarettes or
5 smokeless tobacco sold in Indian country;

6 (3) any limitations under Federal or State law,
7 including Federal common law and treaties, on
8 State, local, and tribal tax and regulatory authority
9 with respect to the sale, use, or distribution of ciga-
10 rettes and smokeless tobacco by or to Indian tribes,
11 tribal members, tribal enterprises, or in Indian coun-
12 try;

13 (4) any Federal law, including Federal common
14 law and treaties, regarding State jurisdiction, or
15 lack thereof, over any tribe, tribal members, tribal
16 enterprises, tribal reservations, or other lands held
17 by the United States in trust for one or more Indian
18 tribes; and

19 (5) any State or local government authority to
20 bring enforcement actions against persons located in
21 Indian country.

22 (b) COORDINATION OF LAW ENFORCEMENT.—Noth-
23 ing in this Act or the amendments made by this Act shall
24 be construed to inhibit or otherwise affect any coordinated
25 law enforcement effort by 1 or more States or other juris-

1 ditions, including Indian tribes, through interstate com-
2 pact or otherwise, that—

3 (1) provides for the administration of tobacco
4 product laws or laws pertaining to interstate sales or
5 other sales of tobacco products;

6 (2) provides for the seizure of tobacco products
7 or other property related to a violation of such laws;
8 or

9 (3) establishes cooperative programs for the ad-
10 ministration of such laws.

11 (c) TREATMENT OF STATE AND LOCAL GOVERN-
12 MENTS.—Nothing in this Act or the amendments made
13 by this Act shall be construed to authorize, deputize, or
14 commission States or local governments as instrumental-
15 ities of the United States.

16 (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—
17 Nothing in this Act or the amendments made by this Act
18 shall prohibit, limit, or restrict enforcement by the Attor-
19 ney General of the provisions herein within Indian coun-
20 try.

21 (e) AMBIGUITY.—Any ambiguity between the lan-
22 guage of this section or its application and any other pro-
23 vision of this Act shall be resolved in favor of this section.

1 **SEC. 7. ENHANCED CONTRABAND TOBACCO ENFORCE-**
2 **MENT.**

3 (a) REQUIREMENTS.—The Director of the Bureau of
4 Alcohol, Tobacco, Firearms and Explosives shall—

5 (1) create 6 regional contraband tobacco traf-
6 ficking teams over a 3-year period in New York
7 City, Washington DC, Detroit, Los Angeles, Seattle,
8 and Miami,

9 (2) create a new Tobacco Intelligence Center to
10 oversee investigations and monitor and coordinate
11 ongoing investigations and to serve as a nerve center
12 for all ongoing tobacco diversion investigations with-
13 in the Bureau of Alcohol, Tobacco, Firearms, and
14 Explosives, in the United States and, where applica-
15 ble, with law enforcement organizations around the
16 world,

17 (3) establish a covert national warehouse for
18 undercover operations, and

19 (4) create a computer database that will track
20 and analyze information from retail sellers of to-
21 bacco products that sell through the Internet or by
22 mail order or make other non-face-to-face sales.

23 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated to carry out subsection (a)
25 \$8,500,000 for each of the 5 fiscal years beginning with
26 fiscal year 2010.

1 **SEC. 8. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), this Act shall take effect on the date that is 90 days
4 after the date of enactment of this Act.

5 (b) BATFE AUTHORITY.—Section 5 shall take effect
6 on the date of enactment of this Act.

7 **SEC. 9. SEVERABILITY.**

8 If any provision of this Act, or any amendment made
9 by this Act, or the application thereof to any person or
10 circumstance, is held invalid, the remainder of the Act and
11 the application of the Act to any other person or cir-
12 cumstance shall not be affected thereby.

13 **SEC. 10. SENSE OF CONGRESS CONCERNING THE PRECE-**
14 **DENTIAL EFFECT OF THIS ACT.**

15 It is the sense of Congress that unique harms are
16 associated with online cigarette sales, including problems
17 with verifying the ages of consumers in the digital market
18 and the long-term health problems associated with the use
19 of certain tobacco products. This Act was enacted recog-
20 nizing the longstanding interest of Congress in urging
21 compliance with States' laws regulating remote sales of
22 certain tobacco products to citizens of those States, includ-
23 ing the passage of the Jenkins Act over 50 years ago,
24 which established reporting requirements for out-of-State
25 companies that sell certain tobacco products to citizens of
26 the taxing States, and which gave authority to the Depart-

1 ment of Justice and the Bureau of Alcohol, Tobacco, Fire-
2 arms, and Explosives to enforce the Jenkins Act. In light
3 of the unique harms and circumstances surrounding the
4 online sale of certain tobacco products, this Act is in-
5 tended to help collect cigarette excise taxes, to stop to-
6 bacco sales to underage youth, and to help the States en-
7 force their laws that target the online sales of certain to-
8 bacco products only. This Act is in no way meant to create
9 a precedent regarding the collection of State sales or use
10 taxes by, or the validity of efforts to impose other types
11 of taxes on, out-of-State entities that do not have a phys-
12 ical presence within the taxing State.

Passed the House of Representatives May 21, 2009.

Attest: LORRAINE C. MILLER,
Clerk.